

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In re Applications of)
)
AMERITECH CORP.,)
Transferor,)
)
AND)
)
SBC COMMUNICATIONS, INC.,)
Transferee,)
)
For Consent to Transfer Control of)
Corporations Holding Commission Licenses)
and Authorizations Pursuant to Sections 214)
and 310(d) of the Communications Act and)
Parts 5, 22, 24, 25, 63, 90, 95 and 101)
of the Commission's Rules)

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JUL 19 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 98-141

To: The Commission, *en banc*

JOINT COMMENTS ON PROPOSED MERGER CONDITIONS

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SUMMARY

The essence of Section IX of the proposed merger conditions is that SBC and Ameritech agree to *maintain the status quo* concerning the provision of Unbundled Network Elements (UNEs) to requesting telecommunications carriers until disputes over their underlying obligations to do so pursuant to Section 251(c)(3) have been definitively resolved by the Commission and reviewing courts. The Joint Cellular Carriers currently have a dispute with Ameritech over its obligation under Section 251(c)(3) to provide Extended Local Calling Area (ELCA) arrangements as Shared Transport network elements, which dispute has been fully raised before the Commission for decision in the UNE Remand proceedings.

However, Ameritech does not acknowledge that ELCA arrangements constitute Shared Transport network elements as heretofore defined by the Commission, and thus is taking the position that existing ELCA arrangements in Michigan will be eliminated after September 30, 1999. Section IX of the merger conditions clearly applies in principle to the dispute between the Joint Cellular Carriers and Ameritech over ELCAs, and Ameritech should not be permitted to avoid its undertakings herein by merely applying a different label to this particular dispute.

Therefore, the Commission should make explicit in its order approving the merger that Section IX of the merger conditions fully applies to the existing ELCA arrangements which Ameritech now provides to the Joint Cellular Carriers.

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JOINT COMMENTS ON PROPOSED MERGER CONDITIONS

CENTENNIAL CELLULAR CORPORATION, CENTURYTEL WIRELESS, INC.,
THUMB CELLULAR LIMITED PARTNERSHIP and TRILLIUM CELLULAR CORP.
(collectively the "Joint Cellular Carriers") respectfully submit their comments to the Federal
Communications Commission in response to the Public Notice, DA 99-1305, released July 1,
1999, inviting interested parties to comment on the package of conditions proposed to be
attached to any Commission approval of the acquisition of Ameritech Corporation by SBC
Communications, Inc.¹ As their comments, the Joint Cellular Carriers respectfully state:

¹ The deadline for filing comments was established as July 19, 1999, by *Order* released July 7, 1999 (DA 99-1342).

Summary of Position

Proposed Section IX of the conditions would require the post-merger SBC/Ameritech to continue providing particular Unbundled Network Elements in each Ameritech state in accordance with Ameritech's February 11, 1999 letter to the Commission (appended as Attachment D) until "such time as the Commission or a court has issued a final order . . . regarding the provisioning of that element as a UNE." In its February 11 letter, in turn, Ameritech represents that it "will *maintain [the] status quo* until the Commission determines, upon remand, which unbundled network elements must be provided pursuant to Section 251(c)(3) in accordance with the requirements of Section 251(d)(2)." (Emphasis added).

The flaw in the proposed condition as now written is that Ameritech has not heretofore acknowledged that the Extended Local Calling Area (ELCA) arrangements it has entered into with the Joint Cellular Carriers in Michigan are in fact provided via Shared Transport network elements within the meaning of Section 251(c)(3) of the Act and the Commission's decision in the *Third Order on Reconsideration* in CC Docket No. 96-98. Accordingly, Ameritech continues to take the position in its dealings with the Joint Cellular Carriers that it has the legal discretion to offer ELCA's or not, irrespective of its obligations under Section 251(c)(3). Ameritech further continues to take the position, contrary to its representations in its February 11th letter to the Commission, that ELCA's will be eliminated in Michigan after September 30, 1999.

Therefore, the Commission should clarify that the representations in Section IX and Ameritech's February 11th letter also apply to the ELCA arrangements currently entered into with the wireless carriers in Michigan, and that, consequently, Ameritech must continue all such existing arrangements until a final order has been entered in the remand proceedings explicitly defining Ameritech's obligation to provide ELCA's via Shared Transport network elements.

Introduction and Background

Each of the Joint Cellular Carriers provides cellular service in one or more Metropolitan Service Areas and/or Rural Service Areas in the State of Michigan. Each carrier has maintained Extended Local Calling Area (ELCA) arrangements² with Ameritech for many years as part of their Type 2A and Type 2B interconnections, most recently pursuant to interconnection agreements approved by the Michigan Public Service Commission as contemplated by Section 252 of the Communications Act.

The use of ELCAs by wireless carriers is necessary because their service areas typically overlay multiple landline exchange areas and rate centers. Therefore, without an ELCA, some landline callers within the wireless service area would *always* incur landline toll charges when calling wireless customers, *even when the wireless phone literally is next door to the landline phone*. Alternatively, in order to provide local landline access to wireless customers throughout the wireless local service area, the wireless customer would have to enter into cumbersome and confusing service arrangements, such as maintaining multiple telephone numbers for the same wireless phone and calling different numbers to reach the phone depending upon where the landline phone is located when the call is made.

Substantially all of the cellular industry in Michigan not affiliated with Ameritech utilize ELCAs extensively and rely heavily upon them in providing their wireless services to the public.

² ELCAs (also commonly referred to as “Reverse Billing” arrangements) are described more fully in Section 2.1 of the “Number Resource Optimization Working Group Modified Report to the North American Numbering Council on Number Optimization Methods,” October 20, 1998 (the “*NANC Report*”). Briefly, they are interconnection arrangements between wireless carriers and ILECs that enable landline calling parties to reach a mobile customer with a local call to a single telephone number from anywhere in the wireless carrier’s service area. The term “Reverse Billing” actually is a misnomer perpetuated by ILECs; thus, the “ELCA” designation utilized in the *NANC Report* will be employed in these comments.

In addition to promoting efficient number utilization, ELCAs are a vitally important marketing tool because they are important factors in making cellular service “user friendly” and in fostering public acceptance and use of cellular service.

Nonetheless, over the vehement opposition of the Joint Cellular Carriers, Ameritech has been attempting to eliminate ELCAs in Michigan for nearly two years.³ Currently, Ameritech’s position is that ELCAs are merely billing arrangements which Ameritech has the legal discretion to offer or not; that Ameritech has not agreed to provide ELCAs beyond September 30, 1999; and that ELCAs will in fact disappear in Michigan after this unilaterally imposed deadline.

Contrary to Ameritech’s position, however, the Joint Cellular Carriers have demonstrated in their Joint UNE Comments filed in the UNE remand proceeding⁴ that ELCAs are in fact provided via the Shared Transport network element as defined by the Commission in its *Third Order on Reconsideration (TOR)* in CC Docket No. 96-98.⁵ The Joint Cellular Carriers thus demonstrated that the provision of ELCAs *vel non* by Ameritech and other ILECs properly is governed by Section 251(c)(3) of the Act and Commission rules thereunder, and is not simply a

³ The history of the continuing litigation between Ameritech and the Joint Cellular Carriers over Ameritech’s attempts to eliminate ELCAs in Michigan is more fully recounted in their Joint Comments on the NANC Report, *In the matter of North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures*, NSD File No. L-98-134, December 21, 1998, pp. 4-9 (the “Joint NANC Comments”), and in their Joint Comments in Response to Second Further Notice of Proposed Rulemaking, *In the matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, May 26, 1999, pp. 6-10 (the “Joint UNE Comments”).

⁴ *In the matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Second Further Notice of Proposed Rulemaking)*, FCC 99-70, published at 64 Fed. Reg. 20238 (26 April 1999).

⁵ *In the matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (Third Order on Reconsideration and Further Notice of Proposed Rulemaking)*, CC Docket No. 96-98, 12 FCC Rcd 12460 (FCC 1997) (subsequent history omitted).

matter of Ameritech's or the other ILECs' discretion.

Comments on Proposed Merger Conditions

The proposed package of merger conditions includes a Section IX, "Offering of UNEs," which states in relevant part as follows:

SBC/Ameritech shall continue to provide UNEs in each Ameritech State in accordance with the commitments made in the letter from Barry K. Allen, of Ameritech, to Mr. [Lawrence E.] Strickling, dated February 11, 1999 This Section IX shall cease to be effective, with respect to a particular network element, at such time as the Commission or a court has issued a final order . . . regarding the provisioning of that element as an UNE. SBC/Ameritech shall have no obligation under this Section to unbundle any network element with respect to which a final Commission Order or binding and non-appealable judicial decision addresses whether unbundling should be required pursuant to 47 U.S.C. §251, but does not require such unbundling.

Ameritech's February 11th letter (Attachment D to the package) in turn represents in relevant part that:

Ameritech . . . will continue to provide, in accordance with its existing agreements (and any Section 252(i) adoption thereof), *access to those network elements that Ameritech provided before the Supreme Court's decision*; and it will continue to negotiate in good faith, in accordance with Section 252(a), access to previously provisioned network elements at rates and on terms and conditions comparable to those contained in Ameritech's existing interconnection agreements. *Ameritech will maintain this status quo until the Commission determines, upon remand, which unbundled network elements must be provided pursuant to Section 251(c)(3) in accordance with the requirements of Section 251(d)(2).*

(Emphasis added).

The flaw with these representations and undertakings as written is that Ameritech heretofore has refused to acknowledge that the ELCA arrangements constitute Shared Transport network elements as defined in the *TOR*. Thus, Ameritech is unlikely voluntarily to interpret the proposed merger conditions as applying to the ELCAs currently being provided to the Joint Cellular Carriers. Nonetheless, the essence of SBC/Ameritech's undertaking in Section IX is that

Ameritech will continue to provide existing network elements, notwithstanding current disputes as to Ameritech's underlying legal obligation under Section 251(c)(3) of the Act to provide them, until such time as a legally final order is entering authoritatively defining Ameritech's obligations under Section 251(c)(3).

In this context, it is irrelevant in principle whether the nature of the underlying dispute between Ameritech and requesting carriers concerns whether a particular arrangement in fact constitutes a network element which must be unbundled, or concerns whether a particular arrangement that admittedly is a network element satisfies the "necessary" and "impair" standard of the Act and thus must be unbundled (or whether *both* matters are in dispute). In any case the fundamental point of the merger condition is that Ameritech has agreed to not disrupt the UNE status quo unless and until authorized to do so pursuant to a final and non-appealable Commission or court decision.

That same principle is equally applicable to, and likewise should govern, the existing ELCA arrangements between the Joint Cellular Carriers and Ameritech in Michigan. Ameritech provided the ELCA's in question to the Joint Cellular Carriers prior to the Supreme Court's decision in *AT&T Corp. v. Iowa Utilities Board*, and did so pursuant to interconnection agreements approved under Section 252 of the Act. Further, the provision of ELCA's constitutes the status quo which Ameritech otherwise has agreed to maintain *pendente lite*, and the issue of Ameritech's obligation to provide ELCA's via the Shared Transport network element as defined in the *TOR* has been squarely raised by the Joint Cellular Carriers as an issue in their Joint UNE Comments in the remand proceedings in CC Docket No. 96-98.

Accordingly, all of the elements contemplated by Section IX of the package are fully satisfied in the case of the dispute over ELCA's between Ameritech and the Joint Cellular

Carriers; and Ameritech properly should not be permitted to anticipate its own desired outcome of the UNE litigation by simply adopting artificially narrow and self-serving interpretations of those conditions excluding ELCAs. Therefore, the Commission should clarify in its order herein that the undertakings and representations of SBC Communications, Inc. and Ameritech Corporation as expressed in Section IX of the proposed merger conditions and in Ameritech's letter dated February 11, 1999, appended as Attachment D thereto, fully apply to the existing ELCA arrangements now being provided by Ameritech in Michigan to the Joint Cellular Carriers.

Conclusion

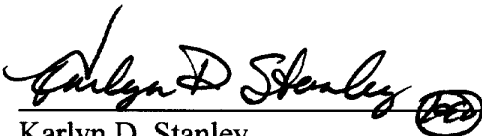
In Section IX of the proposed merger conditions SBC and Ameritech represent that Ameritech will maintain the status quo regarding existing UNEs being provided to requesting carriers until the underlying dispute over Ameritech's obligations to do so under Section 251(c)(3) of the Act is definitively resolved. The dispute over ELCAs between Ameritech and the Joint Cellular Carriers satisfies all of the requirements of Section IX, including the fact that they have explicitly raised the issue of their entitlement to ELCAs as Shared Transport network elements in the CC Docket No. 96-98 remand proceedings. SBC and Ameritech should not be permitted to avoid their undertakings and representations before this Commission merely by applying a different *label* to the disputed arrangement, and the Commission accordingly should make explicit in its order approving the merger that Section IX of the merger conditions fully

applies to the existing ELCA arrangements which Ameritech now provides to the Joint Cellular Carriers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of July, 1999, served the foregoing Joint Comments on Proposed Merger Conditions upon all parties of record in CC Docket No. 98-141 by mailing a true copy thereof, first class postage prepaid, to all such parties or their representative, as shown on the attached three-page list.

A handwritten signature in black ink, appearing to read "Kenneth E. Hardman", written over a horizontal line.

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